IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.318 OF 2006
IN
SUIT NO.4139 OF 1994

Nazmuddin Sayed ... Plaintiff

versus

Sourabha Co-op. Hsg.Society Ltd. and another ... Defendants

and

Shailendra Y. Kharat & anr. ... Respondents

Mr.K.T.Kukreja i/by Kukreja & Co. for plaintiff

Ms.Swati Paradkar for defendant no.1

Mr.Satish Gawde for respondents.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 10th April 2006

PC :

1. In this suit filed in the year 1994 a Chamber Summons was taken out for amendment to the plaint. It is not in dispute that this Court made the Chamber Summons absolute (Chamber Summons No.484 of 2002) on 29th July 2002 and directed that the amendments be carried out within a period of two weeks with usual

directions.

2. This Chamber summons is taken out by the plaintiff seeking condonation of delay of about 1298 days in complying with the order passed by this Court in the above Chamber Summons. In other words, the amendment could not be carried out. Similarly, the plaintiff seeks that the delay in depositing a sum of Rs.41,137/- be condoned.

3. When this matter was placed before me it was brought to my notice by the advocates that a Notice of Motion being Notice of Motion No.289 of 2006 for dismissal of this suit was taken out and the request is that the suit be dismissed because of non compliance with the orders passed by this Court.

4. Order VI, Rule 18 of the CPC provides that if the party who has obtained an order for leave to amend does not amend the plaint within the time limit prescribed in the order, or if no time is prescribed within 14 days, he shall not be permitted to amend after expiration of said time unless the same is extended by the Court.

5. Shri Kukreja appearing for the plaintiff states that the amendment could not be carried out for no fault of the plaintiff but clearly that of the advocate. Shri Kukreja has filed his own affidavit pointing out that because of pressure of work in the office and due to inadvertence and mistake on his part he did not inform the plaintiff that amendment is granted and it has to be carried out. He also contends that at the relevant time a junior advocate in his office was assigned the brief but even she did not carry out the amendment and is now not available, having left practice. Shri Kukreja submits that for no fault of plaintiff the matter must not suffer. In other words, for his lapse, the plaintiff should not suffer.

6. The learned advocate appearing for defendants states that there is gross delay which remains unexplained and having succeeded in getting the Court Receiver appointed in this suit with further direction to be appointed as his agent, the plaintiff is not interested in prosecuting the matter and it is that conduct which should be taken into account and the suit be dismissed. He submits that even the society charges are not being paid. This is a fit case that the heirs

and LRs of defendant no.2 should be put back into possession of the suit premises.

7. After perusing the affidavit in support as also the affidavit in reply and hearing all parties, in my view, in the larger interest of justice the delay in carrying out the amendment should be condoned. It is well settled that all procedural laws and provisions are made to render justice and a liberal view should be taken as no party can be deprived of an adjudication on merits. Here, there is no fault of the plaintiff admittedly. In these circumstances, Chamber Summons is allowed. The delay in carrying out the amendment is condoned and it is directed that if the amendment is carried out within 15 days from today, then the suit shall proceed in accordance with law. This relief is also granted because of the assurance and statement of Shri Kukreja that by that time a sum of Rs.41,137/- would be paid to the co-operative housing society.

8. Learned advocate for co-operative housing society states that hereinafter all the society bills pertaining to the flat would be forwarded to the Court Receiver and the Court Receiver is

directed to ensure that the society dues are paid by the plaintiff.

9. In the light of any default being committed by the plaintiff i.e. either in carrying out the amendment or paying the amount of Rs.41,136/- by the time stipulated in the order, liberty is reserved to the defendant to apply by appropriate proceedings to discharge Court Receiver and/or cancel appointment of plaintiff as his agent and instead replacing the same by appointing defendants or such of them as the agents of Court Receiver. All contentions in that behalf of both sides are expressly kept open. All concerned to act on an authenticated copy of this order issued by Registry.

10. Chamber Summons No.318 of 2006 and Notice of Motion no.289 of 2006 are disposed of accordingly. Plaintiffs to pay costs quantified at Rs.5,000/- (Rs.Five thousand only) to Shri Satish B. Gawde, advocate for respondents to this Chamber Summons and applicants in the Notice of Motion.

11. Needless to state that this order and observations made therein does not prevent the

society from demanding and/or recovering it’s dues in accordance with law.

(S.C.DHARMADHIKARI, J.)